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10     **UNITED STATES DISTRICT COURT**  
11     **DISTRICT OF ARIZONA**

12     Amber Canez; }  
13     Plaintiff, }  
14     v. }  
15     Mark A. Kirkorsky, P.C.; }  
16     Defendant. }  
17     \_\_\_\_\_ )  
18     No. }  
19     COMPLAINT }  
20     (Jury Trial Demanded) }

21     **I. Preliminary Statement**

22     1. Plaintiff brings this action for damages based upon Defendant's violations  
23     of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §§ 1692  
24     *et seq.* Plaintiff seeks recovery of statutory damages, actual damages,  
25     costs and attorney's fees.

26     **II. JURISDICTION**

27     2. Jurisdiction of this Court, over this action and the parties herein, arises  
28     under 15 U.S.C. § 1692k(d) (FDCPA), and 28 U.S.C. § 1331. Venue lies

in the Phoenix Division of the District of Arizona as Plaintiff's claims arose from acts of the Defendant perpetrated therein.

### III. PARTIES

- 4 3. Plaintiff resides in Maricopa County, Arizona.

5 4. Plaintiff is a natural person allegedly obligated to pay a debt.

6 5. Plaintiff is a “consumer” as that term is defined by FDCPA § 1692a(3).

7 6. Defendant Mark A. Kirkorsky, P.C. is a domestic professional corporation  
8 doing business in Arizona as a collection law firm (hereinafter  
9 “Kirkorsky”).

10 7. Kirkorsky collects or attempts to collect debts owed or asserted to be  
11 owed or due another.

12 8. Kirkorsky is a “debt collector” as that term is defined by FDCPA §  
13 1692a(6).

## **IV. Factual Allegations**

- 15 9. In or about 2004, Plaintiff and her husband at the time, Guadalupe Canez,  
16 took out a loan from the Arizona Federal Credit Union (“AFCU”) to  
17 purchase a truck.

18 10. The AFCU loan was incurred for personal, family and household  
19 purposes.

20 11. Plaintiff and Guadalupe later divorced, with the Guadalupe keeping the  
21 truck, and assuming the liability.

22 12. Guadalupe failed to timely make payments on the loan, and in 2009  
23 AFCU assigned the account to Kirkorsky for collection purposes.

24 13. Plaintiff settled her liability on the AFCU account through Kirkorsky’s  
25 office in July or August 2009, and received a full release from AFCU.

- 1 14. In or about August 2012, Kirkorsky mailed a collection letter to Plaintiff  
2 concerning the collection of the AFCU debt.
  - 3 15. At the time the letter was mailed, Kirkorsky knew that Plaintiff had settled  
4 the debt through its office in 2009, and that Plaintiff did not owe the  
5 amount claimed to be due.
  - 6 16. At the time the letter was mailed, Kirkorsky knew, or should have known,  
7 that Plaintiff was represented by counsel concerning the AFCU debt, yet  
8 Kirkorsky sent the collection letter directly to Plaintiff.
  - 9 17. On or about February 15, 2013, Kirkorsky sent another collection letter  
10 to Plaintiff concerning the AFCU debt. (A copy of this letter is attached  
11 as Exhibit A.)
  - 12 18. Kirkorsky claimed that \$13,096.89 was still owed by Plaintiff on the  
13 AFCU debt.
  - 14 19. At the time Exhibit A was mailed, Kirkorsky knew that Plaintiff had  
15 settled the debt through its office in 2009, and that she did not owe the  
16 amount claimed to be due.
  - 17 20. At the time Exhibit A was mailed, Kirkorsky knew, or should have  
18 known, that Plaintiff was represented by counsel concerning the AFCU  
19 debt, yet Kirkorsky sent the collection letter directly to Plaintiff.
  - 20 21. When Plaintiff received these two letters from Kirkorsky, she became  
21 upset as she had already gone through the pain of settling the account with  
22 Kirkorsky's office years before, and these letters brought back the  
23 emotional pain.
  - 24 22. As a result and proximate cause of Defendant's actions, Plaintiff has  
25 suffered actual damages, including, but not limited to, anxiety and other

1 emotional distress.

2 **V. Causes of Action**

3 **a. Fair Debt Collection Practices Act**

- 4 23. Plaintiff repeats, realleges, and incorporates by reference the foregoing  
5 paragraphs.
- 6 24. Defendant's violations of the FDCPA include, but are not necessarily  
7 limited to, 15 U.S.C. §§ 1692c(a)(2), 1692e, 1692e(2)(A), 1692e(8),  
8 1692e(10), and 1692f(1).
- 9 25. As a direct result and proximate cause of Defendant's actions in violation  
10 of the FDCPA, Plaintiff has suffered actual damages.

11 **VI. DEMAND FOR JURY TRIAL**

12 Plaintiff hereby demands a jury trial on all issues so triable.

13 **VII. PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff requests that judgment be entered against  
15 Defendant for:

- 16 a) Actual damages under the FDCPA;  
17 b) Statutory damages under the FDCPA;  
18 c) Costs and reasonable attorney's fees pursuant to the FDCPA; and  
19 d) Such other relief as may be just and proper.

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2 DATED July 17, 2013.

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s/ Floyd W. Bybee  
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